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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/658,390	09/08/2000	Arthur J. Coury	FTI 126	3456

7590

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PATREA L. PABSST  
HOLLAND & KNIGHT LLP  
ONE ATLANTIC CENTER, STE. 2000  
1201 WEST PEACHTREE  
ATLANTA, GA 30309-3400

EXAMINER

WILLIS, MICHAEL A

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 06/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/658,390

Applicant(s)

COURY ET AL.

Examiner

Michael A. Willis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 March 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) 1-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 38-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Applicant's response of 11 March 2002 is entered. Claims 1, 21-28, 34, and 37 are amended. Claims 38-49 are added. Claims 1-49 are pending.

### ***Election/Restrictions***

1. Applicant's election with traverse of new claims 38-49 is acknowledged. The traversal is on the grounds that the restriction is improper. This is not found persuasive because the new claims are directed to a composition comprising a macromer and a monomer, while groups I-IV are now directed at a hydrogel, a method for treatment of biological tissue, and in intermediate.
2. Claims 1-37 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. The requirement is still deemed proper and is therefore made FINAL.
3. Applicant's election of claim 38 as the elected species is acknowledged. Claims 38-49 are examined as they read on claim 38.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 38-49 are rejected under 35 U.S.C. 102(b) as being anticipated by Zajaczkowski et al (US Pat. 5,700,873). Zajaczkowski discloses combinations of a base monomer and a macromer (see abstract and col. 3, lines 53-55). Suitable base monomers include vinyl monomers (see col. 4, lines 45-54). Disclosed monomers such as hydroxyethylacrylate have molecular weight less than 1000 Daltons (see col. 4, lines 45-65). The macromer is comprised of both hydrophilic and hydrophobic groups (see col. 6, line 33-51). The molecular weight of the macromer is preferably between 300 and 3000 (see col. 6, lines 11-13). The monomer can be present up to 70% by weight (see col. 7, lines 11-25).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 38-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zajackowski et al (US Pat. 5,700,873). Zajackowski teaches combinations of a base monomer and a macromer (see abstract and col. 3, lines 53-55). Suitable base monomers include vinyl monomers (see col. 4, lines 45-54). Monomers such as hydroxyethylacrylate have molecular weight less than 1000 Daltons are taught (see col. 4, lines 45-65). The macromer is comprised of both hydrophilic and hydrophobic groups (see col. 6, line 33-51). The molecular weight of the macromer is preferably between 300 and 3000 (see col. 6, lines 11-13). The monomer can be present up to 70% by weight (see col. 7, lines 11-25). The reference lacks disclosed examples of the full scope of the teachings. However, Zajackowski teaches that the resulting polymerized products have a variety of end-uses and may be tailored for particular applications such as filtration agents, sedimentation agents, and pressure sensitive adhesives (see col. 7, lines 34-41).

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10. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the teachings of Zajaczkowski by making actual examples from the teachings of Zajaczkowski in order to benefit from the polymers with particular uses in a variety of end-uses, as taught by Zajaczkowski.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael A. Willis whose telephone number is (703) 305-1679. The examiner can normally be reached on alternate Mon. and Tues. to Fri. from 9am-6:30pm.

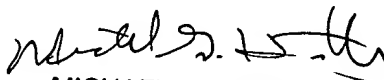
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie can be reached on (703) 308-4612. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.



Michael A. Willis  
Examiner  
Art Unit 1617

June 17, 2002



MICHAEL G. HARTLEY  
PRIMARY EXAMINER